IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6643 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DY.EXECUTIVE ENGINEER

Versus

SINDARVA PATU DANABHAI

Appearance:

MS NAYANA V PANCHAL for Petitioner

MR HRIDAY BUCH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/04/2000

ORAL JUDGEMENT

Rule. Mr. Hriday Buch, the learned advocate appearing for the respondent workman has waived service of rule on behalf of the respondent workman. On the facts and in the circumstances of the case, the matter is taken

up for final hearing today itself.

2. In this petition, the petitioner has challenged the award passed by the labour Court, Junagadh in Reference (LCJ) No. 332 of 1993 dated 20th October, 1997 whereunder the petitioner has been directed to reinstate the respondent workman in service with continuity of service and with full back wages for the intervening period on the post of Mistry cum Clerk. The respondent workman has filed the affidavit in reply and has also produced a copy of statement of claim, purshis and notice served by the respondent to the petitioner and other documents alongwith the reply. As against that, the petitioner has filed affidavit in rejoinder to the affidavit in reply filed by the respondent workman.

3. Ms. Nayana Panchal, the learned advocate appearing for the petitioner has submitted that the labour court has committed gross error in awarding reinstatement of the respondent workman in service with full back wages. She has further pointed out that the gainful employment of the respondent workman was proved before the labour court and was admitted by the respondent workman and, yet, the labour court has ignored the said aspect and has granted full back wages for the intervening period. As against that, Mr. Buch, the learned advocate appearing for the respondent workman has pointed out that this employment which has been admitted by the respondent workman cannot be considered as gainful employment because just to maintain the family, some work is required to be done by the respondent and the same cannot be considered as gainful employment. Mr. Buch has submitted that there was joint pursis filed by both the parties vide Exh. 17 before the labour court wherein the facts have been admitted by the petitioner that the respondent workman has completed 240 days' continuous service and that at the time of termination of his services, the provisions of section 25F have not been complied with. Not only that, but both the learned advocates have requested the court to pass appropriate orders considering such joint pursis Exh. 17 which was produced before the labour court.

I have heard the learned advocates for the parties. I have also perused the entire award passed by the labour court. Mr.Buch is right in submitting that before the labour court, joint pursis Exh. 17 was filed by the parties wherein the statements of fact of completion of 240 days' continuous service has been placed on record. The labour court has considered the said purshis exh. 17 in paragraph 9 of the impugned

award. Thereafter, the labour court has given reasons from para 10 in support of its conclusion and has also observed that the respondent has completed more than ten years service on the post of Mistry cum Clerk and that his service has been terminated on 6th November, 1992without complying with the provisions of section 25F of the ID Act,1947. The labour court has also considered the oral evidence of the respondent who was examined at Exh. 9 before the labour court and he has produced the documents vide Exh. 19 and 20 which were produced during the course of his evidence. The petitioner had examined one witness vide Exh.15 but the said witness has not stated anything contrary to the facts deposed by the respondent on oath before the labour court. The labour court has also observed that in respect of the demand made by the respondent to produce the muster roll,pay register and voucher book, the petitioner has not produced any documentary evidence before the labour court. Not only that but no evidence has been produced by the petitioner to controvert the evidence produced by the respondent. The labour court has also observed that after termination of service of the respondent workman on 6.11.1992,one new employee Bachu Bhoja was employed in place of the respondent workman which also amounts to violation of section 25H of the ID Act and, thereafter,the labour court has observed and considered the evidence of the respondent workman wherein he has admitted that each month, he was earning Rs.600.00 to Rs.700.00 but the labour court has considered that it cannot be considered as gainful employment of the respondent workman. I have perused the a ward in respect of the fact finding that the respondent has completed 240 days' continuous service within 12 months preceding the date of termination as agreed between the parties by joint pursis Exh. 17 and about the finding that the provisions of section 25F have not been followed while terminating the service of the respondent workman. Thereafter, as per the decision of the apex court reported in 2000 AIR 454 in case of Management of MCP versus Premchand Gupta, in which it has been observed by the apex court that it is not in dispute between the parties that these requirements were not complied with by the appellant corporation while terminating the services of the respondent workman, the labour court has rightly held as aforesaid. However, having so held on facts, the labour court found that section 25F would not apply for the reason that the services of the respondent were not terminated because of his being an excess staff. Said reasoning of the labour court ran parallel to the earlier decision of this court in which also such view was taken on interpretation of section 25F but the said law of

reasoning no longer hold the field in light of the later decision of this court in case of State Bank of India versus Sunder Mani 1976 page 9111 wherein the the Bench consisting of three Judges has interpreted section 25F read with sec.2(oo) of the ID Act. In the said decision, it has been clearly held in paragraph 9 that in section 2(oo), the word 'termination' for any reasons whatsoever is the key word. Whatever reasons, every termination spells retrenchment. Said decision was approved by the Constitution Bench in case of Punjab Land Development and Regulation Corporation Ltd. Chandigarh versus Presiding Officer, Labour Court,Chandigarh reported in (1990) 3 SCC 685.

In view of this settled legal position, it must be held that the termination of service of the respondent workman which was admittedly not by way of punishment would clearly amount to retrenchment attracting the provisions of section 25F of the ID Act and, therefore, the apex court has further observed in the aforesaid decision that once it is held that the termination of the service of the respondent was null and void being violative of section 25F, as a natural consequence, he would be entitled to be reinstated in service and in normal course, he would also be entitled to back wages for the intervening period.Thereis another decision of the apex court reported in AIR 1981 SC 1253 in case of Mohanlal which has been followed by this court in decision reported in 1985 (2) GLR 1040 and 1994 (1) GLR 579. Considering all these decisions and the settled law, the labour court has rightly passed the said award and has rightly awarded reinstatement in favour of the respondent with continuity of service while coming to the conclusion that the termination is violative of section 25F of the ID Act.

As regards gainful employment, the workman has admitted that he is doing the labour court and earning around Rs.600.00 to Rs.700.00 p.m. for maintaining his family and, therefore,considering this aspect, I amof the opinion that the award passed by the labour court is required to be modified by denying 25% of the back wages while directing the petitioner to pay 75% back wages for the intervening period. If the award is modified to the aforesaid extent, it will met the end of justice.Therefore, considering the evidence of gainful employment, to that extent, the award passed by the labour court is required to be modified in so far as it relates to back wages and the same is modified as under:

The petitioner is directed to reinstate the

respondent workman in service with continuity of service on the post of mistry cum clerk with 75% of the back wages for the intervening period from the date of his termination of service 6thNovember, 1992 till the date of award 20th October, 1997. The award shall stand modified as aforesaid. The petition is, thus, partly allowed. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

Since this Court has partly allowed this petition while confirming the reinstatement part of the impugned award and has modified the award in so far as it relates to the back wages for the interim period, in the interest of justice, the petitioner is directed to reinstate the respondent workman within four weeks from the date of receipt of certified copy of this order and it is further directed to the petitioner to pay 75% of the back wages for the intervening period from 6th November, 1992 till the date of the impugned award 20th October, 1997 within twomonths from the date of receiptof certified copy of the this order. The petitioner is further directed to pay full wages to the respondent workman from the date of the impugned award 20th October, 1997 till the date of his actual reinstatement in service within three months from the date of receipt of certified copy of this order.

20.4.2000. (H.K.Rathod,J.)

Vyas